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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,631	06/11/2001	Otto H. Fischer	9275	4278

7590

05/07/2003

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/879,631

Applicant(s)

FISCHER ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other:

DETAILED ACTION

Claim Objections

1. Claim 6 is objected to because of the following informalities: Claim 6 depends on itself. Appropriate correction is required. For examination purposes, Claim 6 is understood to be dependent on claim 5.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4,8-10,12-14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Vogt (US 2653430).
4. See Figure 3, Column 1, lines 1-38, Column 15, lines 5-49. Note the enwrapment may be a bag in Column 14, lines 50-52 and the product may be flowable or moldable, such as a cookie in Column 15, lines 50-69.
5. Claims 1-4,8-10,12-14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Burton et al. (US 5326568).
6. See Figures 1,2,6,16-20, Column 2, line 35 to Column 3, line 58.

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7. Claims 1-4,8-10,12-14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fock et al. (US 5174088).
8. See Column 1, line 40 to Column 2, line 27, Column 5, lines 50-58.
9. Claims 1-3,8-10,12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Russell (US 3889448).
10. See Figures 1-4, Column 2, lines 3-32, Column 3, lines 3-63, and Column 4, lines 12-16.
11. Claims 1,5,6,8,13,14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Long (US 5987858).
12. See Figures 6-17, Column 1, lines 9-23, Column 6, lines 15-51, Column 5, line 10 to Column 7, line 17.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burton et al. (US 5326568) as applied to claims 1-4,8-10,12-14, in view of Bullock et al. (US 4330252).

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15. Burton et al. teach meat chunks packaged in pouch (Column 1, lines 5-15), but are silent in teaching tuna per se. Bullock et al. are relied on as evidence of the conventionality of compression either tuna or meat chunks on the same equipment (Abstract, Column 1, lines 8-58). Therefore, it would have been obvious to also include tuna fish in the method and apparatus of Burton et al. since one would have been substituting one type of compressible food chunk for another.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen 
Examiner
Art Unit 1761
May 1, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
for M. Cano